

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ROBERT GENE REGA,	)	
	)	
Plaintiff,	)	Civil Action No. 06-1575
	)	
v.	)	Judge McVerry
	)	Magistrate Judge Caiazza
JEFFREY BEARD, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

**I. RECOMMENDATION**

For the reasons that follow, it is respectfully recommended that the Plaintiff's federal claims be dismissed with prejudice and that his Motion to Remand (Doc. 2) be granted.

**II. REPORT**

The Plaintiff, Robert Gene Rega ("Rega" or "the Plaintiff"), is a state inmate confined at the State Correctional Institution at Greene, located in Waynesburg, Pennsylvania ("SCI-Greene"). Rega filed a Complaint in the Court of Common Pleas of Greene County alleging that he was denied proper medical treatment while incarcerated, and he specifically asserts that his right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution has been violated (Doc. 1, Ex. 3). The Defendants removed this case on the basis of the federal claim, and in fact, two notices of removal were filed, and two federal cases were docketed. Civil Action No. 06-1603 was closed on December 28, 2006 (Doc. 5).

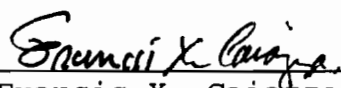
The Plaintiff moves to remand this case and asserts that his inclusion of an Eighth Amendment claim in his Complaint was an error, and that he intends to proceed only under the Pennsylvania Constitution (Doc. 2) and has moved to amend his Complaint (Doc. 3) to include only state law claims. Defendants Folino, Burks and Beard have responded (Doc. 6) stating that they have no objection to a remand because the proposed Amended Complaint sets out no federal claims. Defendants Jin, Moore and Gress have also responded to the Motion to Remand (Doc. 7) and assert that this court should treat Rega's Motion as one voluntarily dismissing his Eighth Amendment claims with prejudice and that remand would then be appropriate.

The latter course is more appropriate since Rega clearly made a federal claim in his initial Complaint, and he now seeks to have that part of his action withdrawn. Defendants Jin, Moore and Gress aptly recognize that, absent an order dismissing Rega's claim with prejudice, he would be free to amend his state court action to include a federal claim after remand. Where a party files a motion to voluntarily dismiss claims, a court may dismiss them on any "terms and conditions it deems proper." Fed. R. Civ. P. 41(a)(2). For these reasons, it would be appropriate to dismiss Rega's Eighth Amendment claim with prejudice prior to remand.

In accordance with the Magistrate's Act, 28 U.S.C. § 636

(b) (1) (B) and (C), and Rule 72.1.4 (B) of the Local Rules for Magistrates, objections to this Report and Recommendation are due by January 29, 2007. Responses to objections are due by February 8, 2007.

January 11, 2007

  
\_\_\_\_\_  
Francis X. Caiazza  
United States Magistrate Judge

cc: Robert Gene Rega  
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